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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,388	05/03/2001	Isabelle Afriat	205731US0	6489

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EXAMINER

HAGHIGHATIAN, MINA

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/19/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/847,388

Applicant(s)

AFRIAT, ISABELLE

Examiner

Mina Haghighatian

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-32 and 34-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-32, 34-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Amendments filed 04/07/03 were entered. Claim 33 was cancelled and new claims 46-47 were added. Claims 1, 3-32 and 34-47 are pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-32 and 34-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castro et al (6,306,407) in view of Sebillotte-Arnaud (5,814,322).

Castro et al teach a cosmetic or pharmaceutical composition for topical application to the skin which comprises a fibrous component for promoting the transfer of moisture and oil and removal of unpleasant and unwanted moisture from skin, especially the facial skin. The fibrous component can include wicking fibers, evaporating fibers, or a combination of both. The fibrous component contains wicking fibers to facilitate the transfer of moisture and oil from the surface of the skin to the composition. The composition, when applied to the skin provides a layer of fibers having moisture and oil regulating properties. The compositions maintain the natural and fresh appearance of the skin even during exercise and other hot and humid environmental conditions (col. 2, lines 37-64).

Castro discloses that the pores of the facial skin can become clogged by moisture and oil, and lead to acne, ugly blackheads, and other skin problems (col. 1,

lines 19-21). Also disclosed is a method of wicking moisture and oil and evaporating moisture off of the skin by applying to the skin the said compositions, which keep the skin dry and comfortable even during physical activities. The compositions feel smooth, light and natural on the skin and do not strip the skin of essential moisture beneath the surface of the skin necessary to keep the skin healthy (col. 2, lines 15-33).

Castro teaches that the fibers can be selected from the group consisting of polyethylene, rayon, cotton, wool, silk and blends thereof and are treated. The nylon fibers have a denier from about 0.8 to about 20.0 (col. 3, lines 25-52; claims 1 & 4). The fibrous component is present in an amount of from about 0.005 to about 1.0 percent by weight, and preferably from about 0.01 to about 0.5 percent by weight. The shape of the fibers can be any assortment of shapes such as round, bean, bone, oval, irregular, etc. But most preferred shape is round. The fibers have a length from about 0.01 to 0.25 inches. The composition also includes a compatible carrier. The carrier may contain one or more oil component. The carrier comprises oil in an amount of at least about 0.5 to about 60 percent by weight (col. 4, lines 1-30; 49-54).

Castro discloses a method of wicking moisture and oil and evaporating moisture off of the skin comprising applying to the skin the cosmetic or pharmaceutical composition which comprises fibrous component. The benefit of adding fibers to cosmetic or pharmaceutical compositions can be obtained in any type of makeup composition, for example, foundations, eyeshadows, blushes, powders, lipsticks, etc. Also disclosed is the **benefit** of non-make up compositions such as **treatment**

products, wherein the product is applied to the skin for a therapeutic purpose, but also has the added advantage of controlling oil and moisture on the skin (col. 5, lines 13-33).

Castro discloses additional preferred components of the cosmetic compositions including one or more pigments, fillers, metal stearates, oil-soluble antioxidants, chelating agents, sunscreens such as zinc oxide, oil-soluble actives such as tocopherol and its derivatives, retinol and its derivatives, and the like (col. 5, line 51 through col. 6, line 38). Castro shows ingredients of a foundation formulation in example 1, and discloses a measurement of moisture and oil regulation, where a makeup foundation containing fibers, is tested using a panel of 30 female individuals. The qualifying panelists are selected from ages 18 to 55 and have normal, normal-oily, or oily facial skin, and are regular users of a liquid, transfer-resistant foundation at least 5 days a week (col. 7, lines 22-30). Castro also teaches methods for changing appearance of skin, comprising applying to the skin a composition comprising an effective amount of fibers in a physiologically acceptable carrier.

Castro teaches the benefit of adding treatment products to the fibrous composition, but fails to disclose specific active agents such as those listed in claim 1.

Sebillotte-Arnaud teaches compositions containing a cosmetically and/or dermatologically acceptable hydrophilic medium, water and optionally an active agent which makes it possible in particular to prevent and/or control pigmentation of the skin or to control greasy skin (paragraph bridging columns 1 & 2). Sebillotte-Arnaud discloses that active agents which can be dissolved in the composition, agents active

against greasy skin, such as retinoic acid, benzoyl peroxide, octopirox, erythromycin, clindamycin, miconazole, econazole and anti-inflammatories such as hydrocortisone, etc (col. 2, lines 57-67).

Sebillotte-Arnaud discloses that although the amount of active agent in the compositions is not particularly limited, good results may be achieved with compositions which contain from 0.01 to 25% by weight, preferably 0.1 to 10% by weight, based on the total weight of the composition (col. 3, lines 6-11).

Although the combined references do not specifically disclose a range of covering index for the composition, these are considered inherent properties of the composition and are not support for patentability.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, given the fibrous cosmetic/pharmaceutical compositions of Castro et al for controlling oil and moisture of the skin to have looked in the art for specific active agents for treating greasy skin, as taught by Sebillotte-Arnaud with the reasonable expectations of obtaining a composition which provides the user a complimentary benefit and is non-sticky and easy to use, which gives the skin a healthy and smooth appearance.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Such art includes (JP 07196440).

JP '440 teaches skin cosmetics comprising short fibers which are excellent in water resistance and oil resistance, and provide good conditions of stability and application to the skin. Such cosmetics give a **smooth touch** to the skin with no greasiness. These short fibers, in the length of 0.1 to 5 mm can be synthetic or natural fibers such as cotton, sheep wool, silk, rayon, acrylic type, a polyamide type etc. Since the polyamide type is excellent in usability, it is the most preferable type (page 5/22, items 0003 and 0004).

JP '440 also discloses that the short fibers are in the range of 0.1 to 20 deniers, and most preferred are 0.1 to 1.2 deniers. The amount of short fibers is 0.1 to 10 wt% and more preferably 0.5 to 5 wt% (page 6/22, items 0005 and 0007).

JP '440 teaches that the composition may contain other ingredients such as oil, moisturizer, antioxidant, a chelating agent, a pigment, an antiseptic, etc. Also the examples show that the composition may be in the form of an emulsion, foundation or cream. The methods of preparation for such compositions are also included (pages 6/22 through 14/22).

Response to Arguments

Applicant's arguments filed 04/07/03 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

Art Unit: 1616

where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, applicant argues that Castro is teaching oil-based compositions, while Sebillotte-Arnold is teaching gelled compositions and therefore one skilled in the art would not be motivated to use Sebillotte-Arnold's active agents in Castro's compositions. However, 1) the suggestion for success comes from Castro's teachings that the compositions are for controlling oil in the skin and may contain an agent for treatment, and one of ordinary skill in the art would be motivated to include an active agent which also removes excess oil from the skin, therefore offering the user a dual action formulation for treating greasy skin. 2) Castro exemplifies formulations that are considered "emulsions". But teaches that the formulation can be in any form, including powders. Preferred embodiments do not teach away from a broader disclosure, see *In re Susi*. 3) Sebillotte-Arnold's reference is merely a supporting art to show that the named active agents are well known and widely used in the art.

Applicant also argues that Castro's formulations typically contain about 0.005 to 1% by weight of fibers, which is "substantially less fiber than the preferred compositions of the present invention". This is not persuasive because the amount of fiber required for the present invention are from about 0.1 to about 30% (see claim 9). The range of Castro is clearly overlaps the preferred range by the claims.

In conclusion, applicant's arguments are found *not persuasive* because Castro is clearly teaching the composition and the method of treating greasy skin. The effects of the composition on the skin and its properties are inherent.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

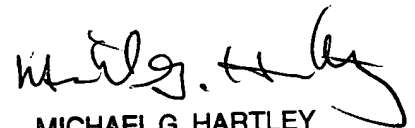
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mina Haghighatian whose telephone number is 703-308-6330. The examiner can normally be reached on core office hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Art Unit: 1616

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0198.

Mina Haghighatian
August 11, 2003


MICHAEL G. HARTLEY
PRIMARY EXAMINER